

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

Case No. 2:06-cv-00441-LDG (LRL)

12 v.

ORDER

13 JOY M. FERGUSON, *et al.*,

14 Defendants.

15
16 The plaintiff, the United States of America, brought this suit seeking to recover
17 refunds for federal income, social security, and Medicare taxes that it erroneously paid to
18 the defendant, Joy M. Ferguson. The United States alleged that it erroneously paid the
19 refunds as a result of misrepresentations and fraudulent statements that Ferguson made
20 on her 2001 and 2002 Form 1040 tax returns.

21 Ferguson has filed: two motions to dismiss (## 5, 17); a motion for sanctions (#8); a
22 “Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to
23 Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights” (## 9,
24 10); a “Motion to Demand this Court Read All Pleadings Defendant Files with this Court,
25 and Adhere Only to Constitutionally Compliant Law and Case Law, and More Particularly,
26

1 The Bill of Rights, in its Rulings" (#22); a "Motion for Citizen's Demand for Trial by Jury"
2 (#23); and a motion for summary judgment (#26).

3 The United States has filed a motion for summary judgment (#12), as well as
4 responses to each of the motions filed by Ferguson. Ferguson opposed the motion for
5 summary judgment (#13), and filed a motion to amend her reply (#15).

6 Motions Claiming Constitutional Rights, Requiring this Court to Uphold Said Rights,
7 and Requiring this Court to Adhere Only to Constitutionally Compliant Law.

8 By these motions, Ferguson apparently seeks to compel the court to apply, to this
9 action, her interpretations of the Constitution and the law of the United States and the
10 constitution and law of the State of Nevada. The motions are denied.

11 Motions to Dismiss and for Summary Judgment.

12 Factual Background. Carter and Burgess, Inc., employed Ferguson in 2001, paying
13 her \$21,610 in wages. Carter and Burgess also withheld \$868 in income tax, \$1,339 in
14 Social Security tax, and \$313 in Medicare tax. In January 2005, Ferguson filed a Form
15 1040 Individual Income Tax Return for the year 2001, on which she reported that she
16 received "0" (zero) wages, an income tax liability of "0" (zero), income tax withheld of
17 \$868.36, and excess social security tax withheld of \$1,653.17. Ferguson did not attach a
18 Form W-2 Wage and Tax Statement to her 2001 return, but instead attached a Form 4862
19 Substitute for Form W-2, Wage and Tax Statement. On the Form 4862, which Ferguson
20 signed, she reported that her employer was Carter & Burgess, Inc., that she received "0"
21 (zero) wages, that the income tax withheld was \$868.36, the social security tax withheld
22 was \$1,339.82, and the Medicare tax withheld was \$313.35. Ferguson stated that Burgess
23 and Carter "refuse[d] to issue forms correctly listing payments of "wages" as defined in
24 3401(a) and 3121(a)."

25

26

1 The United States asserts that, based upon wages of \$21,610, Ferguson's income
2 tax liability for 2001 was \$1,826.00, an amount exceeding the \$868.36 that Burgess and
3 Carter had withheld.

4 Carter and Burgess also employed Ferguson in 2002, paying her \$22,595 in wages.
5 In that year, Carter and Burgess withheld \$473 in income tax, \$1,400 in Social Security tax,
6 and \$327 in Medicare tax. In January 2005, Ferguson filed a Form 1040 Individual Income
7 Tax Return for the year 2002, on which she reported that she received "0" (zero) wages, an
8 income tax liability of "0" (zero), income tax withheld of \$473.10, and excess social security
9 tax withheld of \$1,728.58. Ferguson did not attach a Form W-2 Wage and Tax Statement
10 to her 2002 return, but instead attached a Form 4862 Substitute for Form W-2, Wage and
11 Tax Statement. On the Form 4862, which Ferguson signed, she reported that her
12 employer was Carter & Burgess, Inc., that she received "0" (zero) wages, that the income
13 tax withheld was \$473.10, the social security tax withheld was \$1,400.94, and the Medicare
14 tax withheld was \$327.64. Ferguson stated that Burgess and Carter "refuse[d] to issue
15 forms correctly listing payments of "wages" as defined in 3401(a) and 3121(a)."

16 The United States asserts that, based upon wages of \$22,595, Ferguson's income
17 tax liability for 2002 was \$1,931.00, an amount exceeding the \$473.10 that Burgess and
18 Carter had withheld.

19 Analysis. The core of the dispute before the court is Ferguson's assertion that she
20 was not an "employee" as defined by §3401(c) of the Internal Revenue Code, and
21 therefore did not earn any "wages."¹ As such, she argues that her Form 1040 and Form
22 4862 accurately reported her wages as zero. As noted by the government, Ferguson's

23
24 ¹ Ferguson raises other arguments, including: that the United States cannot
25 bring this action; that the complaint failed to include a "short and plain" statement of the
26 grounds upon which this court has jurisdiction; and several theories that the United States
somehow conceded or waived its claims. Each of these arguments are as frivolous as
Ferguson's claim that she did not earn any taxable income in 2001 and 2002 because she
was not an employee.

1 interpretation of §3401(c) has been considered and rejected numerous times by many
2 courts. This Court would agree with the overwhelming precedent on this issue, Ferguson's
3 argument that she is not an employee as defined by §3401(c) is frivolous.

4 Accordingly,

5 THE COURT **ORDERS** that Joy M. Ferguson's two motions to dismiss (## 5, 17);
6 her motion for sanctions (#8); her "Motion to Claim and Exercise Constitutional Rights and
7 Require the Presiding Judge to Rule upon this Motion, and All Public Officers of this Court
8 to Uphold Said Rights" (## 9, 10); her motion to amend reply (#15); her "Motion to Demand
9 this Court Read All Pleadings Defendant Files with this Court, and Adhere Only to
10 Constitutionally Compliant Law and Case Law, and More Particularly, The Bill of Rights, in
11 its Rulings" (#22); her "Motion for Citizen's Demand for Trial by Jury" (#23); and her motion
12 for summary judgment (#26) are DENIED.

13 THE COURT FURTHER **ORDERS** that the United States' Motion for Summary
14 Judgment (#12) is GRANTED.

15 DATED this 20 day of March, 2007.



Lloyd D. George
United States District Judge

16
17
18

19
20

21
22

23
24

25
26